

**IN THE UNITED STATES DISTRICT COURT
OF THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

SHERRI DAY

VS.

**COMMISSIONER OF SOCIAL
SECURITY ADMINISTRATION**

§
§
§
§
§
§
§

CIVIL ACTION NO. 5:14cv156

MEMORANDUM ORDER

The above entitled and numbered civil action was heretofore referred to United States Magistrate Judge Caroline M. Craven pursuant to 28 U.S.C. § 636. The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration. Plaintiff filed objections to the Report and Recommendation. The Court conducted a *de novo* review of the Magistrate Judge's findings and conclusions.

Plaintiff objects to the Magistrate Judge's recommendation that Plaintiff's social security cause of action be affirmed. Docket No. 18. Specifically, Plaintiff asserts that the Magistrate Judge erred in finding the Administrative Law Judge's ("ALJ") credibility finding is supported by substantial evidence and resulted from the application of the proper legal standards. *Id.* According to Plaintiff, the ALJ is biased against granting social security disability benefits and he only offered boilerplate, conclusory statements regarding his observations of Plaintiff at the hearing. *Id.*

The ALJ found Plaintiff's allegations were not consistent with or supported by the preponderance of the medical and other record evidence. This is "precisely the kind[] of determination[] that the ALJ is best positioned to make." *Falco v. Shalala*, 27 F.3d 160, 164 (5th Cir. 1994). As noted by the Magistrate Judge, the ALJ "enjoys the benefit of perceiving first-hand


the claimant at the hearing.” *Id.* at 164, n.18.

The ALJ’s observations of Plaintiff’s demeanor and behavior at the hearing were only one of many factors on which the ALJ relied in reaching his conclusions that Plaintiff’s allegations of a complete inability to work were not completely credible. The ALJ also considered the objective medical evidence and Plaintiff’s activities of daily living. The Court agrees with the Magistrate Judge that substantial evidence supports the ALJ’s credibility determination as well as his residual functional capacity determination.

After reviewing the transcript, the briefs of the parties and the Report and Recommendation, the Court finds Plaintiff’s objections are without merit. The Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct. Therefore, the Court hereby adopts the Report and Recommendation of the Magistrate Judge as the findings and conclusions of this Court. Accordingly, it is hereby

ORDERED that the above-entitled Social Security action is **AFFIRMED**.

So ORDERED and SIGNED this 26th day of September, 2016.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE